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9 Collector of the County of Santa Barbara,  
California; and Santa Barbara County Air  
Pollution Control District*

10 UNITED STATES BANKRUPTCY COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 SANTA BARBARA DIVISION

13 In re:

Case No.: 9:19-bk-11573-MB

14 HVI Cat Canyon, Inc.,

Chapter 11

15 Debtor.

16 **SANTA BARBARA COUNTY AIR  
17 POLLUTION CONTROL DISTRICT,  
18 COUNTY OF SANTA BARBARA, AND  
19 HARRY E. HAGEN, TREASURER-TAX  
20 COLLECTORS' MOTION FOR  
21 CORRECTION OR RECONSIDERATION  
22 OF INTERIM ORDER**

23 Date: December 20, 2019

24 Time: 10:00 a.m.

25 Place: Courtroom 201  
26 1415 State Street  
27 Santa Barbara, California

28 Judge: Hon. Martin R. Barash

1 **TO THE HONORABLE MARTIN R. BARASH, UNITED STATES**  
2 **BANKRUPTCY JUDGE, AND ALL INTERESTED PARTIES:**  
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4 The Santa Barbara County Air Pollution Control District, the County of Santa  
5 Barbara, and Harry E. Hagen, Treasurer-Tax Collector of the County of Santa Barbara<sup>1</sup>  
6 (“Hagen-Tax Collector”) move for correction or reconsideration of this Court’s  
7 November 18, 2019 interim order [ECF No. 524] and respectfully state as follows:  
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9 1. On November 7, 2019, the Trustee filed his *Emergency Motion for an Order:*  
10 *(1) Authorizing the Trustee to Obtain Secured Priming Superpriority Financing; (2) Authorizing the*  
11 *Continued Use of Cash Collateral; (3) Scheduling a Final Hearing; and (4) Granting Related Relief*  
12 *[ECF No. 474]* (the “Motion”) for authorization to obtain post-petition financing from  
13 UBS AG, Stamford Branch (“UBS AG, Stamford Branch”) and continue to use the Cash  
14 Collateral of UBS AG, London Branch.  
15

16 2. On November 8, 2019, the Court conducted an initial interim hearing on  
17 the Motion and drafted and signed the *Interim Order on Trustee’s Emergency Motion for an*  
18 *Order: (1) Authorizing the Trustee to Obtain Secured Priming Superpriority Financing; (2)*  
19 *Authorizing Continued Use of Cash Collateral; (3) Scheduling a Final Hearing; and (4) Granting*  
20 *Related Relief* [ECF No. 480] (the “First Interim Order”), authorizing up to \$267,317  
21 borrowings through a further interim hearing on November 12, 2019.  
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<sup>1</sup> Hagen, Treasurer-Tax Collector does not submit to the jurisdiction of this Court for  
determination of the Debtor’s tax liabilities.

1       3.     The Court's First Interim Order stated, in relevant part, that "To secure the  
2 Subject Indebtedness, UBS shall be given a priming lien in first position on all assets of  
3 the estate, **but not ahead of liens securing ad valorem taxes on the real property of**  
4 **the estate.** Said lien shall not encumber avoiding power claims or proceeds thereof."  
5 First Interim Order at ¶ 3 (emphasis added). UBS AG, Stamford Branch and the Trustee  
6 represent that, on Friday, November 9, 2019, after entry of the First Interim Order, an  
7 advance of \$197,516 was made to the Trustee pursuant to the First Interim Order.  
8

9       4.     On November 12, 2019, the Court conducted a second interim hearing,  
10 and on November 18, 2019, the Court signed the *Second Interim Order on Trustee's Emergency*  
11 *Motion for an Order: (1) Authorizing the Trustee to Obtain Secured Priming Superpriority Financing;*  
12 *(2) Authorizing Continued Use of Cash Collateral; (3) Scheduling a Final Hearing; and (4) Granting*  
13 *Related Relief* [ECF No. 524] (the "Second Interim Order"). At the § 341(a) meeting on  
14 the morning of November 21, 2019, the Trustee and his financial advisor testified that  
15 UBS AG, Stamford Branch advanced over \$990,000 to the Trustee on November 20 or  
16 21, 2019 pursuant to the Second Interim Order.  
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18       5.     On November 21, 2019, the Court conducted the final hearing on the  
19 Motion and authorized post-petition financing on a final basis but refused UBS's request  
20 for a priming lien over Hagen-Tax Collector's lien, finding the grant of such a priming  
21 lien at the time of the Second Interim Order had been in error. At the conclusion of the  
22 hearing, UBS argued that both the amount advanced under the First Interim Order and  
23 the amount advanced under the Second Interim Order are secured by a lien that primes  
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1 the lien of Hagen-Tax Collector. Hagen-Tax Collector disputed that assertion because  
2 the Court was clear at the first interim hearing and in the First Interim Order that any  
3 advance under the First Interim Order would not prime the tax lien.  
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5. Hagen-Tax Collector requests that the Court modify and correct any  
6 language in the Second Interim Order that is contrary to the Interim Order with respect  
7 to priming the Hagen-Tax Collector's lien. UBS AG, Stamford Branch did not cite to  
8 any particular language in the Second Interim Order for its assertion of a priming lien  
9 for the advance under the First Interim Order. The only reference to that first advance  
10 is in the following sentence in paragraph 7 on page 5 of the Second Interim Order: "All  
11 advances provided by UBS AG, Stamford Branch under the Facility, including the  
12 \$197,516 advanced by UBS AG, Stamford Branch on an emergency basis pursuant to  
13 the [First] Interim Order, shall be subject to the terms of this Order." This does not state  
14 that UBS AG, Stamford Branch is being granted a priming lien for the \$197,516 advance,  
15 and that would be directly contrary to the language in the First Interim Order which was  
16 drafted by the Court. In that First Interim Order, the Court clearly stated that "UBS shall  
17 be given a priming lien in first position on all assets of the estate, **but not ahead of liens**  
18 **securing ad valorem taxes on the real property of the estate.**" First Interim Order at  
19 ¶ 3 (emphasis added). The Second Interim Order does not purport to vacate, modify or  
20 subsume the First Interim Order, and UBS AG, Stamford Branch should not be  
21 permitted to use it in that way.  
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1       7.     The Court should make clear that the Second Interim Order does not grant  
2 UBS AG, Stamford Branch a priming lien over Hagen-Tax Collector's lien for the  
3 advance made under the First Interim Order. The Court has inherent power to do so.  
4  
5 *Zurich Am. Ins. Co. v. Int'l Fibercom, Inc. (In re Int'l Fibercom, Inc.)*, 503 F.3d 933, 940 (9<sup>th</sup> Cir.  
6 2007) ("bankruptcy courts, as courts of equity, have the power to reconsider, modify or  
7 vacate their previous orders so long as no intervening rights have become vested in  
8 reliance on the orders."); *In re Lenox*, 902 F.2d 737, 739-740 (9<sup>th</sup> Cir. 1990") (same); *see also*  
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10 *Credit Suisse First Boston Corp. v. Grunwald*, 400 F.3d, 1119, (9<sup>th</sup> Cir. 2005) (a court "always  
11 has power to modify or to overturn an interlocutory order or decision while it remains  
12 interlocutory."); *Dye v. Sachs (In re Flashcom, Inc.)*, 2014 Bankr. LEXIS 4215 \*21-22 (9<sup>th</sup> Cir.  
13 B.A.P. 2014) ("bankruptcy courts have inherent equitable authority to modify or vacate  
14 compromise stipulations if circumstances so justify."); *Balla v. Idaho State Bd. Of Corrections*,  
15 869 F.2d 461, 465 (9<sup>th</sup> Cir. 1989) (Court have inherent power to modify their interlocutory  
16 orders, also citing Fed. R. Civ. P. 54(b)). The bankruptcy court's power to reconsider,  
17 modify or vacate previous orders is established by § 105(a) of the Bankruptcy Code,  
18 which provides that a bankruptcy court may, "sua sponte tak[e] any action or mak[e] any  
19 determination necessary or appropriate to enforce or implement court orders or rules, or  
20 to prevent an abuse of process." *In re Int'l Fibercom, Inc.*, 503 F3d at 940.  
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23       8.     Use of the inherent power to modify prior orders is especially appropriate  
24 where there has been an error. *See Heritage Pac. Fin., LLC v. Edgar (In re Montano)*, 501  
25 B.R. 96, 113-14 (9<sup>th</sup> Cir. B.A.P. 2013) ("Simply put, a trial court's concession that it erred  
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1 in an earlier order requires that court to set aside the order and reconsider the parties'  
2 arguments...The bankruptcy court did not abuse its discretion in reconsidering an order  
3 that it conceded was entered in error.”).

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5. UBS AG Stamford Branch cannot argue that the \$197,516 it advanced  
6 pursuant to the First Interim Order was in reliance on the Second Interim Order, which  
7 did not exist at the time of the advance. No intervening right became vested as a result  
8 of the Second Interim Order other than the second advance made after that order and  
9 before the Court’s ruling at the final hearing. Section 364(e) could only be urged by UBS  
10 Stamford Branch to protect the advance it made after the Second Interim Order, not the  
11 advance it made pursuant to the First Interim Order.  
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14 WHEREFORE, PREMISES CONSIDERED, the Court should order that the  
15 Second Interim Order does not give UBS any priming lien over the Hagen-Tax Collector  
16 lien for the \$197,516 advanced pursuant to the First Interim Order or any amounts other  
17 than the advance made after the Second Interim Order and before the November 21  
18 final hearing, and the Court should grant such other relief to which the movants are  
19 entitled. A proposed form of order is attached as Exhibit 1.  
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22 Dated: November 26, 2019

SNOW SPENCE GREEN LLP

23 By: /s/ Ross Spence  
24 Ross Spence

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26 *Attorneys for the County of Santa Barbara,*  
27 *California; Harry E. Hagen, as Treasurer-*  
28 *Tax Collector of the County of Santa*  
*Barbara, California; and Santa Barbara Air*  
*Pollution Control District*